

REMARKS

Responsive to the preliminary determination of lack of unity set forth in the outstanding Official Action, applicants provisionally elect with traverse Group III, claims 45-51, drawn to a pharmaceutical comprising carrier or diluent and method of treating a subject at risk of developing infection diseases including urinary tract and wounds, comprising administering the pharmaceutical whereby an accelerated improvement in the quality of milk from cows.

The reasons for traverse follow:

The Invention Groups I and II are linked to Invention Group III by virtue of the fact that the pharmaceutical composition of Invention Group III, is used in the methods of Invention Group I and II.

Indeed, as the present National Stage Application is subject to PCT rules for the purpose of restriction, it is respectfully noted that determination of the lack of unity is possible only when the claims of different inventions lack a "special technical feature" relative to one another.

PCT Rule 13.2 in Part 1b of the Annex B of the administrative instructions under the PCT specifies that "special technical features" are those features that define a contribution which each of the inventions, considered as a whole, makes over the prior art. That is, PCT Rule 13.2 is art-based and requires

the citation of a publication showing the "special technical feature".

Thus, absent any showing any showing of a pharmaceutical composition as defined in Group III in a prior art reference, no determination of lack of unity can properly be made.

Therefore, the restriction requirement should be withdrawn.

Conclusion

A favorable action on the merits of all claims, in their full scope, is respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future submissions, to charge any deficiency or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

/Robert A. Madsen/  
Robert A. Madsen, Reg. No. 58,543  
209 Madison Street, Suite 500  
Alexandria, VA 22314  
Telephone (703) 521-2297  
Telefax (703) 685-0573  
(703) 979-4709

RAM/jr